INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	5
Conclusion	12

CITATIONS

Cases:	
Blondet v. *Hadley*, 144 F. 2d 370	6
Chandler v. *Dix*, 194 U. S. 590	6
Chicot County Dist. v. *Bank*, 308 U. S. 371, rehearing denied, 309 U. S. 695	7
Great Falls Mfg. Co. v. *Attorney General*, 124 U. S. 581	7
Hansberry v. *Lee*, 311 U. S. 32	8
Henry v. *United States*, 46 F. 2d 640	7
Holmes v. *Cummings*, 71 F. 2d 364	8
Ickes v. *Fox*, 300 U. S. 82	10
Land v. *Dollar*, O. T. 1946, No. 207, decided April 7, 1947	11
Louisiana v. *Garfield*, 211 U. S. 70	5, 6, 9
Louisiana v. *McAdoo*, 234 U. S. 627	5
Naganab v. *Hitchcock*, 202 U. S. 473	6
New Mexico v. *Lane*, 243 U. S. 52	6, 9
Oklahoma v. *Atkinson Co.*, 313 U. S. 508	9
Oregon v. *Hitchcock*, 202 U. S. 60	5
Philadelphia Co. v. *Stimson*, 223 U. S. 605	10
Shields v. *Barrow*, 17 How. 130	8
Stanley v. *Schwalby*, 162 U. S. 255	6
United States v. *Lee*, 106 U. S. 196	10, 11
United States v. *Nudelman*, 104 F. 2d 549	7, 8
United States v. *Shaw*, 309 U. S. 495	5
United States v. *Sherwood*, 312 U. S. 584	5
Wilson v. *Union Electric Light & Power Co.*, 59 F. 2d 580	7
Wood v. *Phillips*, 50 F. 2d 714	6
Statutes:	
Act of March 1, 1911, 36 Stat. 961, 962–963, 16 U. S. C. 513–519 (Weeks Forestry Act)	3
Act of May 29, 1928, c. 915, 45 Stat. 1010	9

740957—47

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1194

ALICE MARTENS YOUNG, ETC., PETITIONER

v.

CLINTON P. ANDERSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The district court rendered no opinion. The opinion of the court of appeals (R. 76–79) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on January 6, 1947 (R. 80). A petition for rehearing was denied on January 22, 1947 (R. 81–89). The petition for a writ of certiorari was filed on April 3, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the

Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States of America is an indispensable party to a suit wherein the prior owner of lands seeks to have adjudicated as nullities the condemnation judgments and voluntary deeds by which the United States acquired title to such lands from such owner.

STATEMENT

The judgment sought to be reviewed affirms an order dismissing petitioner's complaint. The material factual allegations, as they appear from the complaint, may be summarized as follows:

In 1935 the Miss-Wis Timber and Land Company, a Wisconsin corporation of which petitioner was then a stockholder, contracted to sell to the United States approximately 17,050 acres of land in Wilkinson County, Mississippi, with a reservation of mineral interests for a period of ten years from July 1, 1935, and subsequently, for the agreed consideration, executed deeds to the United States covering 14,750.06 acres of the land but reserving the mineral interest aforesaid. The balance of 2,245.93 acres, with a like mineral reservation, was acquired by the United States at the contract price by condemnation proceedings instituted in 1937. In 1938, the Miss-Wis Company conveyed its mineral rights in the lands to petitioner's husband, Edward J. Young, who in

turn conveyed such rights to petitioner and thereafter the corporation was dissolved (R. 3, 8–10).

In 1934 and 1935, petitioner executed options to the United States for the purchase of other land in Franklin and Wilkinson Counties, Mississippi, totalling approximately 1,518 acres, owned by her individually. The United States acquired 1,495.39 acres of such land at the prices named in the options by condemnation proceedings instituted in 1936, mineral rights being reserved to petitioner as to a portion of said lands for a period of ten years from July 1, 1935, and as to the balance for a period of ten years from July 1, 1934 (R. 8–10).

The deeds and condemnation judgments by which the United States acquired title are attached as exhibits to the complaint (R. 22–49).

The complaint alleges that the above acquisitions were made under the provisions of the Weeks Forestry Act, 36 Stat. 961, 962–963, 16 U. S. C. 513–519, and that said Act is unconstitutional (R. 10–11). It is also alleged that there was a lack of proper consent by the State of Mississippi to the acquisition of these lands by the United States, and therefore a lack of compliance with the terms of the Weeks Forestry Act (R. 11–13). Petitioner sues in her own behalf, and, so far as the lands acquired by the United States from the Miss-Wis Company are concerned, she sues on behalf of herself and

other stockholders as a member of such class (R. 3).

The complaint prays that the court adjudge that the United States has no title to the lands under the deeds and condemnation judgments, that title remains in the grantors, and that an accounting be compelled for the period of occupancy by the United States. It is further prayed that the respondents be required to surrender for cancellation the deeds of conveyance to the United States and that the respondents be required "to cooperate in correcting the records in said Counties of Wilkinson and Franklin, State of Mississippi, and in said District Court of the United States, Southern District of Mississippi, to reflect the true state of the title in said lands and interests." In addition to these prayers for adjudication of the title of the Government as a nullity, the complaint asks that the Secretary of Agriculture and subordinate officials named as defendants be enjoined from "exercising any acts of ownership" with respect to the lands or leasing them (R. 16–17).[1]

Respondents moved to dismiss the complaint on various grounds (R. 53). Hearing was had on that motion (R. 54–70) and two days later the district court entered its order of dismissal on

[1] The complaint also alleged that the Secretary was under a statutory duty to quitclaim the lands to petitioner and prayed that he be compelled to do so (R. 15–16). The Court of Appeals ignored this contention, and the point is abandoned in the petition for a writ of certiorari.

the ground "that this is an action against the United States" (R. 70, 71). The Court of Appeals affirmed the order of dismissal stating (R. 77) that "the action is clearly one against the United States." Having concluded that the sovereign immunity from suit barred this action, the court did not pass upon the other grounds urged by respondents to sustain the dismissal (R. 53).

ARGUMENT

It is, of course, axiomatic that the United States cannot be sued without its consent. *United States* v. *Shaw,* 309 U. S. 495; *United States* v. *Sherwood,* 312 U. S. 584. Also well settled is the principle that in determining whether a suit is against the United States, the courts will look beyond the nominal parties to see whether rights, interests, or property of the United States are in fact under attack. *Oregon* v. *Hitchcock,* 202 U. S. 60; *Louisiana* v. *Garfield,* 211 U. S. 70; *Louisiana* v. *McAdoo,* 234 U. S. 627. Accordingly, if the instant action be one to which the United States is an indispensable party, it was properly dismissed since there has been no consent by the United States to its being sued with respect to these lands.

On the facts alleged by petitioner a clearer case of the interests, rights, or property of the United States being attacked is difficult to imagine. Petitioner concedes that the Government has a record legal title to all of the lands previously individually owned by her, and to part of the Miss-Wis

Corporation lands, by virtue of judgments of condemnation in judicial proceedings to which petitioner and the corporation were parties. Also conceded is the fact that the balance of the corporation lands were voluntarily conveyed to the United States for an agreed consideration. Plainly the complaint asks that the court adjudge that the title of the United States thus acquired is a nullity. This cannot be done in this case in the absence of the consent of the United States to be sued. *Stanley* v. *Schwalby,* 162 U. S. 255; *Louisiana* v. *Garfield,* 211 U. S. 70; *New Mexico* v. *Lane,* 243 U. S. 52; *Naganab* v. *Hitchcock,* 202 U. S. 473; *Wood* v. *Phillips,* 50 F. 2d 714 (C. C. A. 4); *Blondet* v. *Hadley,* 144 F. 2d 370 (C. C. A. 1); cf. *Chandler* v. *Dix,* 194 U. S. 590.

In *Louisiana* v. *Garfield, supra,* Louisiana sought an adjudication that it had title to certain lands, and this Court stated that the issue of title, as between the State and the United States, could not be resolved in the absence of the United States as a party, and that questions of law and fact inhered in that issue "upon which the United States would have to be heard." 211 U. S. at 77. This holding was reaffirmed in *New Mexico* v. *Lane,* 243 U. S. 52. So here equally important questions exist upon which the Government should be heard. The following is a listing of some, not necessarily all, of such questions.

(a) Petitioner's contentions that the Weeks

Forestry Act is unconstitutional (Pet. 15–18) and that there was a non-compliance with the state consent requirements of that act (Pet. 18–24) constitute matters which could have been interposed as defenses by petitioner and the Miss-Wis Corporation in the condemnation proceedings. The judgments in those proceedings are therefore *res judicata* of those issues. *Chicot County Dist.* v. *Bank,* 308 U. S. 371, rehearing denied, 309 U. S. 695.

(b) The Government, if a party, could argue that petitioner and the corporation, having accepted the benefits of the transactions, are in no position to challenge the validity thereof. A condemnee who accepts the award cannot later challenge the right to condemn. *Great Falls Mfg. Co.* v. *Attorney General,* 124 U. S. 581, 598–599; *Wilson* v. *Union Electric Light & Power Co.,* 59 F. 2d 580, 582–583 (C. C. A. 8); *Henry* v. *United States,* 46 F. 2d 640, 642 (C. C. A. 3). The same result follows as to the lands voluntarily conveyed. Cf. *United States* v. *Nudelman,* 104 F. 2d 549 (C. C. A. 7).

(c) Despite the fact that the present challenge to the constitutionality of the Weeks Forestry Act and the alleged insufficiency of the state consent statute were open to petitioner when these acquisitions were made, she allowed the condemnation judgments to become final and waited ten years to challenge them or the deeds. Her action

is barred by laches. Cf. *Holmes* v. *Cummings*, 71 F. 2d 364 (C. C. A. 5); *United States* v. *Nudelman*, 104 F. 2d 549 (C. C. A. 7).

(d) Petitioner cannot maintain the action as a class action for all stockholders of the corporation. Such action is permitted only where the parties bringing the suit "fairly represent the former in the prosecution of the litigation of the issues in which all have a common interest." *Hansberry* v. *Lee*, 311 U. S. 32, 41. The other stockholders may be satisfied with the transactions by which the corporation parted with title to its land. Moreover, the other stockholders not parties could not be compelled to make restitution to the Government, a prerequisite to rescission. *Shields* v. *Barrow*, 17 How. 130, 132. Petitioner's offer (R. 14) to make restitution in their behalf simply constitutes her a volunteer as to any greater interest than she has in the corporation's property as a stockholder.

(e) The asserted constitutional issue is not presented by the pleadings.[2] Petitioner concedes (R. 11 and Pet. 16) that the Weeks Forestry Act is constitutional in so far as it provides for the

[2] The Court of Appeals did not, as petitioner states (Pet. 8), decide this question. It merely indicated how it would decide it if it were necessary, referring to authorities sustaining the Weeks Act. A full examination of the court's opinion (R. 77–78) clearly shows that the single ground of decision was that the suit could not be maintained in the absence of congressional consent.

acquisition of lands in the promotion of navigation. The complaint does not allege that the lands in suit are not of that character. Petitioner's challenge to the sufficiency of the state consent statute (Pet. 18) is likewise groundless. As indicated by the court below (R. 78) the state's consent is even broader than Congress required. Moreover, state consent is not a constitutional prerequisite. *Oklahoma* v. *Atkinson Co.*, 313 U. S. 508, 534.[3]

It is submitted that none of the above questions can be decided behind the Government's back, and that the judgment below is correct on the basis of decisions of this Court, notably *Louisiana* v. *Garfield, supra,* and *New Mexico* v. *Lane, supra.* In each of these cases, it may be noted, a prayer for injunctive relief fell along with the prayer for title adjudication.

Petitioner attempts to distinguish these cases (Pet. 28) on the ground that there the question was whether title had passed from the United States, while here the question is whether title was acquired by the United States. Clearly, the Government interest is as much involved and it is just as important that the United States be a party where the relief sought is an adjudication that judgments of condemnation in favor of the

[3] In one instance, Congress dispensed with this requirement. Act of May 29, 1928, c. 915, 45 Stat. 1010.

United States and deeds of conveyance to the United States are void.

Nor do the cases relied upon by petitioner (Pet. 19, 24–27) sustain her contention. For example, in *Ickes* v. *Fox,* 300 U. S. 82, all that was decided was that suit could be maintained to restrain a federal officer from unlawfully infringing what was recognized and defined by federal legislation as a private property right. Similarly, an alleged unlawful interference with a conceded property right is all that was involved in *Philadelphia Co.* v. *Stimson,* 223 U. S. 605. There was no question in that case of title as between the Company and the Government.

Petitioner's main reliance (Pet. 24–26) is upon *United States* v. *Lee,* 106 U. S. 196, but a careful study of that decision shows it is not in point here. Initially, the two cases are entirely different on the facts. In the *Lee* case, the plaintiff sued Strong and Kaufman as individuals merely for possession (106 U. S. at 210). The plaintiff's pleadings did not acknowledge any interest of the United States in the property, such interest being asserted by the defendants. This Court sustained the suit, but noted (106 U. S. at 222) that the United States was not bound by the judgment. The important thing is that no legal claim of the United States was sought to be adjudicated in that case. The only thing adjudicated was the right to possession as between the plaintiff and

defendants as individuals.[4] In the case at bar, as hereinbefore shown, petitioner's complaint acknowledges that she and the corporation engaged in litigation with the United States as a result of which judgments of condemnation were entered establishing title in the United States to part of the lands, and, as noted, her present contentions could and should have been interposed in those proceedings by way of defense. Also shown by petitioner's complaint is the fact that the corporation executed deeds to the United States conveying the balance of the lands. And finally, petitioner seeks relief not against individual defendants for trespass, as in the *Lee* case, but an adjudication that these judgments and deeds *of the United States* are void. The type of relief petitioner asks answers of itself the question whether this is in fact a suit against the United States. The rights of the United States are the only rights sought to be put in issue. For the same reason, this Court's decision in *Land* v. *Dollar,* O. T. 1946, No. 207, decided April 7, 1947, which rested upon the *Lee* case, does not support petitioner here. That case did not present an attempt to cancel deeds and judgments conveying real property to the United States.

[4] The *Lee* case was simply a local action for possession of real property. The court below did not reach respondents' further contention that, in any event, the instant suit was a local action maintainable only in the jurisdiction where the land is situated.

CONCLUSION

It is submitted that the decision below is correct and the petition for a writ of certiorari should be denied.

Respectfully,

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